

*****DRAFT - NOT FOR FILING*****

3301-73-04 Confidentiality of investigative records.

- (A) All information obtained during an investigation is confidential and is not a public record under section 149.43 of the Revised Code except as provided in paragraphs (B) to (H) of this rule.
- (B) If the state board and the respondent enter into a consent agreement under division (E) of section 3319.311 of the Revised Code and rule 3301-73-23 of the Administrative Code, the consent agreement is a public record under rule 3301-73-23 of the Administrative Code.
- (C) If the superintendent issues a letter of admonishment under rule 3301-73-22 of the Administrative Code, the letter of admonishment and any response thereto is a public record under rule 3301-73-22 of the Administrative Code.
- (D) If the superintendent concludes that the results of the investigation warrant initiating an action under section 3319.31 of the Revised Code, except as provided in paragraph (E) of this rule, only the information listed in paragraphs (D)(1) to (D)(13) of this rule ~~is~~**shall be** a public record under section 149.43 of the Revised Code:
- (1) The notice of opportunity for an administrative hearing under Chapter 119. of the Revised Code;
 - (2) Respondent's written request for an administrative hearing under Chapter 119. of the Revised Code;
 - (3) Any request filed by a party for a continuance of an administrative hearing and the subsequent judgment entry filed by the hearing officer;
 - (4) Exhibits admitted into evidence in an administrative hearing on behalf of the parties unless the exhibits are admitted by the hearing officer under seal;
 - (5) Any list of witnesses and documents, provided by the parties, that describes evidence or witnesses intended to be introduced in an administrative hearing;
 - (6) Any documents used by the department to fulfill its statutory obligation under sections 119.01 to 119.13 of the Revised Code to schedule the hearing;
 - (7) All other motions and any responses made in writing and filed by the parties;
 - (8) All other entries filed by the hearing officer;
 - (9) The administrative hearing transcript, except for portions of the transcript sealed by the hearing officer;
 - (10) The superintendent's proposed resolution to be submitted to the state board;
 - (11) The report and recommendation of the hearing officer;
 - (12) Objections to the hearing officer's report and recommendation, any motion to strike the objections to the hearing officer's report and recommendation, any response to the motion to strike, and the hearing officer's decision on the motion to strike;
 - (13) The state board's final resolution; and
 - (14) All other information obtained ~~will~~**shall** remain confidential and ~~is~~**shall not be** a public record under section 149.43 of the Revised Code.
- (E) If the superintendent concludes that the results of the investigation warrant initiating an action under division

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(C) of section 3319.31 of the Revised Code to automatically revoke or deny a license, only the following three documents ~~are~~ **shall be a** public records under section 149.43 of the Revised Code:

- (1) The written order issued by the superintendent to revoke or deny the license;
- (2) The certified court records of the conviction, which is the basis for the revocation or denial of the license;
and
- (3) Any notice of appeal related to the conviction, which is the basis for the revocation or denial of the license.

(F) ~~Information received by the department, state board of education, or superintendent pursuant to an investigation is confidential and not subject to discovery in any civil action.~~ The department may disclose information that is not a public record when ordered to do so by a court order and/or a subpoena issued only by a court with a pending legal action before it that is evidenced by an official docket number issued by the court and/or a local, state or federal agency with statutory subpoena authority.

Commented [DM2]: Moved from section I to section F in this administrative rule to provide ease and understandability to the reader as the sections work in conjunction with each other.

- (1) If the department determines that disclosure pursuant to a subpoena would be a violation of privilege, statute, or rule, the department may apply to either the issuing agency or the court for a protective order. While the application for protective order is pending, the department ~~shall~~ **will** not disclose the subpoenaed information.
- (2) The department is precluded from issuing a subpoena to itself for records that are confidential under section 3319.311 of the Revised Code.

(G) All disciplinary actions taken by the state board of education ~~are~~ **shall be** public record, and ~~will~~ **shall** be maintained with the department's official records.

(H) All disciplinary actions taken by the state board ~~will~~ **shall** be reported to national databases that list educator disciplinary actions including, but not limited to, the national association of state directors of teacher education and certification (www.nasdtc.org).

~~(I) Information received by the state board of education or superintendent pursuant to an investigation is confidential and not subject to discovery in any civil action.~~

Commented [RA3]: Moved from section I to section F in this administrative rule to provide ease and understandability to the reader as the sections work in conjunction with each other.

~~(J)~~ Any public record under section 149.43 of the Revised Code released pursuant to this rule ~~will~~ **shall** be redacted to remove any confidential information as required by federal, state, or local law.

~~(JK)~~ All offers of settlement, proposals of adjustment, and proposed stipulations not agreed to ~~will~~ **shall** be privileged, ~~are~~ **shall** not constitute admissions, ~~are~~ **shall** not be admissible in evidence against the party making the offer or proposal, and ~~are~~ **shall** not be a public records under section 149.43 of the Revised Code.